

RON AND MARGERY A. MARTIN

IBLA 91-22

Decided August 5, 1994

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying protest against 1987 dependent resurvey of subdivisional lines establishing positions for three corners. Group No. 794 (Colorado).

Appeal dismissed.

1. Administrative Procedure: Standing -- Rules of Practice: Appeals:  
Standing to Appeal -- Surveys of Public Lands: Dependent Resurveys

An appeal from a decision of BLM denying a protest against a BLM dependent resurvey of corners along a section line by the owners of private land that is tied to one of those corners is properly dismissed for lack of standing where the appellants' land is entirely surrounded by private land and the resurvey only determined the boundaries of distant public land, as they are not adversely affected by BLM's affirmance of the resurvey.

APPEARANCES: Walter G. Robillard, Esq., Norcross, Georgia, for appellants; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Ron and Margery A. Martin have appealed from the August 17, 1990, decision of the Colorado State Office, Bureau of Land Management (BLM), denying their protest against BLM's 1987 dependent resurvey. 1/ The

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1/ The Martins' counsel has requested that we add the following parties who own nearby private land that would purportedly be affected by BLM's location of the controverted subdivisional line as appellants: Clifford Cerise, Jean M. Blue, Stephen H. Callicotte, Robert C. Schenck, Sr., Betty Lou Schenck, Virginia A. and Willard K. Cordill, Martha R. and Will N. Johnson, Miriam Dee C. Pattison, William K. Jenkins, and David A. Powell. By previous order, we denied the requests to recognize Cerise, Blue, and Callicotte as appellants, ruling that they had no standing to appeal from the August 1990 BLM decision since they had not participated in the

resurvey, conducted between June 5, 1985, and June 25, 1987, was based on Special Instructions dated June 3, 1985, and Supplemental Special Instructions dated July 17, 1986, for Group No. 794, Colorado.

On June 6, 1985, the Grand Junction, Colorado, District Office Manager notified the Colorado State Director that survey work would be initiated in the township. "All public lands" were to be monumented. The survey was needed to facilitate trespass resolution on those Federal lands, which was seen as requiring "some lotting of trespass parcels."

There were no Federal lands remaining in sec. 24 or 25 in 1985, and there are none currently. The nearest Federal lands directly affected by the resurvey are in the west half of sec. 23 and the north half of sec. 26. <sup>2/</sup> Special instructions dated June 3, 1985, were issued for Group No. 794, Colorado, described as "the dependent resurvey of portions of certain exteriors, subdivisional lines, metes-and-bounds surveys, and the subdivision of certain sections in" the township. Those instructions stressed that the "field work embraced in this authorization consists of the necessary retracements, resurveys, and surveys in sufficient detail to identify and monument the national resource lands in sections 1 thru 3, 7 thru 9, 11, 12, 15 thru 18, 20 thru 23, 26 and 28" in the township (emphasis supplied). Secs. 24 and 25, having no Federal lands, were not included. The instructions dictated that the "exterior and subdivisional lines will be dependently resurveyed" in accordance with the Manual of Surveying Instructions, 1973 (Manual).

The instructions were supplemented on July 17, 1986, "to include the dependent resurvey and subdivision of section surveys in sufficient detail to identify the public lands in sections 30, 31, 32, and 36," in the township. Also, the supplemental instructions authorized the "dependent

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fn. 1 (continued)

decisionmaking that led to that decision, and thus were not "part[ies] to [the] case," as required by 43 CFR 4.410(a). See also Stanley Energy, Inc., 122 IBLA 118, 120 (1992). For the same reason, we now deny the request on behalf of the other named individuals since there is no evidence that they can properly be considered "part[ies] to [the] case."

In addition, the record shows that E. A. and Irene C. Schumacher, Charles Harris, and William K. and Cindy A. Jenkins, also nearby private landowners, objected to BLM's 1987 dependent resurvey on Oct. 29 and Nov. 18, 1991. To the extent that their objections can be considered appeals from the August 1990 BLM decision, they are dismissed as untimely.

The statement of reasons indicates that Callicotte, Charles Harris, Glen C. Harris, Cerise, Blue, and the Cordills filed protests against the acceptance of points. We are not aware that BLM has taken any action on those protests. Upon return of the instant case, BLM should treat each of these objections as a protest to the resurvey, and adjudicate it. See Peter Paul Groth, 99 IBLA 104, 108-10 (1987).

<sup>2/</sup> The Federal lands are the SW 1/4 SE 1/4, SE 1/4 SW 1/4, Lots 1, 2, 3, and 4, sec. 23, and the NW 1/4 NE 1/4 and the N 1/2 NW 1/4 sec. 26.

resurvey of any control line in this township \* \* \* together with the establishment of 1/16 section or lesser order corners, provided they control or define federally administered lands and can be accomplished without additional retracement." (Emphasis supplied.)

In 1987, BLM conducted the dependent resurvey of the subdivisional lines in the township. BLM tied to the section and quarter corners the lines that run north, south, and west from the section corner, i.e., the lines between secs. 23 and 24, 23 and 26, and 25 and 26, as well as the interior subdivisional lines of secs. 23 and 26 and the sixteenth corner between secs. 23 and 24. See Survey Plat ("Sheet 1 of 2"). These corners served as control points, delineating the boundaries between public land in sections 23 and 26 and adjacent private land in those and surrounding sections. BLM's resurvey, inter alia, located and remonumented the original positions of two survey corners: the section corner of secs. 23, 24, 25, and 26 (the section corner), and the one-quarter section corner between secs. 23 and 24 (the quarter corner). In addition, BLM located and monumented (apparently for the first time) the south one-sixteenth section corner (the sixteenth corner) between secs. 23 and 24, all in T. 7 S., R. 88 W., sixth principal meridian, Garfield County, Colorado (the township). It is not clear from the record that acceptance of the plat of resurvey was ever published in the Federal Register.

On May 14, 1990, the Martins filed their protest against the resurvey, specifically as it concerned BLM's acceptance of the monuments at the section and quarter corners in 1982. The protest identifies the following parcel, owned by them, as being adversely affected by the resurvey: "A parcel of land in the S 1/2 of the NW 1/4 of the SW 1/4 in section 24 township 7 south, Range 88 west of the 6th p.m." The Martins included a plat of survey of that parcel done by Sargay Post in September 1972 which used a "Stone 8" X 12" X 6" marked 1/4 [sic] Mound alongside" as the quarter corner, and a "Lava rock 8" X 14" X 6" Mound alongside" as the section corner. <sup>3/</sup> The Martins also alluded to "an adjacent parcel," evidently purchased by them in 1979, "which also uses the section corner common to sections 23, 24, 25, & 26 as a beginning point." <sup>4/</sup> None of the private land abutting the public land is owned by the Martins. Thus, the disputed corners do not serve to denote the boundary between any land owned by the Martins and public land.

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<sup>3/</sup> The Martins also included an "Improvement Location" survey by Sydney Lincicome, dated Oct. 25, 1982, which was "based on corners found in place that were set by Sargay [P]ost." That survey did "in no way take into account the location by the Garfield County Surveyor in 1982" of the section corner or the quarter corner.

<sup>4/</sup> The Martins set out what appears to be a partial metes and bounds description of that parcel: "Beginning at a point whence the corner common to sections 23, 24, 25, & 26, said township and range, bears S. 00 deg. 42' 47" W. 1298.60 ft.: etc." Thus, the parcel is apparently in either sec. 25 or 26.

On August 17, 1990, BLM issued its decision denying the Martins' protest, which was supported by a document setting out BLM's reasons for denying the protest. 5/ BLM concluded that the positions accepted by BLM while executing the field survey are proper and accordingly dismissed the protest.

Appellants and BLM have presented extensive arguments on appeal regarding the propriety of BLM's 1987 resurvey of the disputed corners. However, on May 30, 1991, BLM requested the Board to dismiss their appeal for lack of standing. Appellants opposed that motion on July 29, 1991. We grant BLM's motion.

[1] In order to have standing to appeal, appellants must be a "party to [the] case" and have a legally cognizable interest which is "adversely affected" by the August 1990 BLM decision. 43 CFR 4.410(a). See Missouri Coalition for the Environment, 124 IBLA 211, 216 (1992). Appellants are parties to the case, by virtue of the filing of their protest. See Burton A. McGregor, 119 IBLA 95, 98-99 (1991); Colorado Open Space Council, 109 IBLA 274, 279 (1989). However, dismissal of their protest does not automatically render them adversely affected by the August 1990 BLM decision. See Colorado Open Space Council, supra, at 280; In Re Pacific Coast Molybdenum Co., 68 IBLA 325, 331 (1982).

There is no evidence that appellants have any right, claim, or title to, have any interest in, or use in any way any land adjacent to a boundary of public land in secs. 23 and 26 or elsewhere that was reestablished by BLM during the 1987 resurvey. As a result, they are not adversely affected by BLM's August 1990 denial of their protest. See Phelps Dodge Corp., 72 IBLA 226, 228 (1983).

Appellants assert that they are adversely affected by virtue of BLM's relocation of the section corner since that action will move the corner to the east, thus shifting their entire landholding (which is tied to this corner) to the east and placing it in conflict with other private land and rendering their house in violation of the county's 25-foot setback requirement (Letter to BLM, dated May 5, 1990, at 1). See also Appellants' Response at 2, 13-14, 27. Appellants' standing argument is thus premised on the fact that BLM's 1987 resurvey will "move" the corners. That is not the case.

BLM does not have any authority to relocate, by means of a resurvey, the boundaries of public land once it has passed into private ownership. See United States v. Reimann, 504 F.2d 135, 138-39 (10th Cir. 1974); Wilogene Simpson, 110 IBLA 271, 277 (1989); James S. Mitchell, 104 IBLA 377, 380 (1988). BLM's statutory authority extends only to the relocation of public land boundaries, that is, lines that mark the boundary between public and private or other public land. The applicable statute limits the authority of the Department to "cause to be made \* \* \* such resurveys or

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5/ BLM referred to that document as a "statement of reasons." We shall not, in order to avoid confusion with appellants' statement of reasons in support of the present appeal.

retracements of the surveys of public lands as, after full investigation, [the Secretary] may deem essential to properly mark the boundaries of the public lands remaining undisposed of." 43 U.S.C. § 772 (1988) (emphasis supplied). Thus, BLM's authority extends only to resurveying the boundaries of public lands. No like authority exists with respect to resurveying what are no longer public land boundaries since all of the surrounding land has passed into private ownership.

In such cases, the proper location of the disputed private land boundary must be resolved by the private landowners on either side of the line, by means of negotiation or, if necessary, resort to State court or a Federal court applying State law. See James S. Mitchell, supra at 380; Sarah Calvin, 94 IBLA 162, 166 (1986); Manual, § 6-10 at 146. 6/

Since BLM lacks the authority to resurvey private land boundaries where, although originally surveyed under the rectangular survey system, there is no longer adjacent public land, it is clear that any action taken by BLM will not affect any such boundary. Rather, any action is properly regarded as being solely for BLM's own purposes. The act of accepting a corner as genuine is often taken to aid in the demarcation of distant public land boundaries. Thus, corners along sections lines where the land on either side of the line has passed into private ownership are identified and used as "control points" (see Frank Lujan, 40 IBLA 184, 185 (1979)), and the line itself can be viewed as a "control line." See Wilogene Simpson, *supra* at 273. We note that, in "Supplemental Special Instructions," issued July 17, 1986, BLM provided for resurveying "any necessary control line" in the case of the 1987 resurvey.

Such corners or lines serve no other purpose than to control the location of distant corners along section and other subdivisional lines of the rectangular survey system that in fact mark the boundaries of public land. They do not affect any purely private land boundary that abuts, or indeed is tied to, these corners since, in the absence of any adjoining public land, BLM lacks any authority to resurvey such a boundary. So far as such a boundary is concerned, BLM's resurvey of the corners has no legal effect; any effort to do so would be a "legal nullity." James S. Mitchell, *supra* at 380. BLM's placement of a control line is not binding either on the affected private landowners or, in the event of a dispute between such landowners, on a court of competent jurisdiction. There need be no congruence between BLM's location of the SE corner for purposes of its resurvey of the public lands in secs. 23 and 26 and the location of that corner for purposes of controlling private land boundaries in the surrounding four sections. It is quite possible that the latter corner will diverge from the former.

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6/ We note that, so far as we are aware, there is presently pending a lawsuit by appellants against Garfield County Surveyor Robert D. Scarrow. See Complaint, attached to Letter to Board from Mark A. Hermundstad, Esq., dated Oct. 26, 1993. That suit challenges Scarrow's 1982 surveying effort, which resulted in the two monuments ultimately relied upon by BLM to identify the location of the section and quarter corners. This suit may eventually prove to be a vehicle for resolving the instant controversy. We express no opinion regarding that litigation.

BLM's resurvey could provide evidence in such a dispute of where the original corners were located. It is true, as appellants contend, that a corner accepted by BLM might carry some persuasive weight in the dispute. See Appellants' Response at 13-14. However, as the court stated in United States v. Hudspeth, 384 F.2d 683, 688 n.7 (9th Cir. 1967), it would not constitute conclusive evidence regarding the location of the private land boundary. In the absence of legal authority, BLM cannot actually relocate, by means of a resurvey, the boundaries of public land that has passed into private ownership. In the absence of any legal effect, it is established that the private landowners, whose boundary abuts or is tied to the original corners, are not "adversely affected," within the meaning of 43 CFR 4.21(a), by BLM's resurvey of those corners, and that they accordingly lack standing to appeal from BLM's denial of their protest against the resurvey. Alice L. Alleson, 77 IBLA 106, 107, 108 n.2 (1983).

Appellants' land in sec. 24 is entirely surrounded by private land. Any public land is situated some distance to the west in the interior of secs. 23 and 26. Appellants do not own any land abutting that public land and do not control or even use any such land. In these circumstances, it is clear that BLM's 1987 resurvey, locating the SE corner of sec. 23, does not affect appellants' private land boundaries, even though these boundaries are tied to that corner. BLM's ability to affect these boundaries ceased once appellants' land and the surrounding land passed into private ownership. Absent any adverse affect on their private landholdings, appellants lack any standing to appeal from BLM's denial of their protest to the resurvey.

In the absence of standing to appeal, the Board is without jurisdiction to consider an appeal, and it must be dismissed. See, e.g., State of Alaska (Anna Nick), 121 IBLA 155, 160 (1991). Therefore, in accordance with our prior decision in Alleson, we hold that appellants' appeal from BLM's August 1990 decision denying their protest to the 1987 BLM dependent resurvey, to the extent that it accepted the SE and E 1/4 corners of sec. 23, T. 7 S., R. 88 W., sixth principal meridian, Garfield County, Colorado, is properly dismissed for lack of standing to appeal. See also John W. Yeargan, 126 IBLA 361, 369-70 (1993); Wilogene Simpson, supra at 275-76; James S. Mitchell, supra at 380-81; Sarah Calvin, supra at 165-66.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' appeal is dismissed.

David L. Hughes  
Administrative Judge

I concur:

R. W. Mullen,  
Administrative Judge

